

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District <b>NEW YORK</b>
Name of Movant <b>HAMAD KADIR</b>	Prisoner No. <b>75656-053</b>	Case No. <b>08-CR-48-1 (JG)</b>
Place of Confinement <b>CCA/E.D.C. EDEN, TX 76837-0605</b>		

UNITED STATES OF AMERICA                      V.                      **HAMAD KADIR**  
**FOR THE DISTRICT OF NEW YORK**                      (name under which convicted)

**MOTION**

1. Name and location of court which entered the judgment of conviction under attack \_\_\_\_\_  
**UNITED STATES FEDERAL COURTHOUSE FOR THE DISTRICT OF NEW YORK.**
2. Date of judgment of conviction **12-05-2008**
3. Length of sentence **30 MONTHS**
4. Nature of offense involved (all counts) **18:1029(A)(2) ACCESS DEVICE FRAUD;**  
**COUNT 10, 18:1028 A(A)(1) AGGRAVATED IDENTIFY THEFT.**
5. What was your plea? (Check one)
  - (a) Not guilty ☐
  - (b) Guilty ☒
  - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_
6. If you pleaded not guilty, what kind of trial did you have? (Check one)
  - (a) Jury ☐
  - (b) Judge only ☐
7. Did you testify at the trial?  
 Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?  
 Yes ☐ No ☐

AO 247 (Rev. 2/95)

9. If you did appeal, answer the following:

- (a) Name of court \_\_\_\_\_
- (b) Result \_\_\_\_\_
- (c) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court U.S.D.C. NEW YORK DISTRICT

(2) Nature of proceeding STOP DEPORTATION ORDERS DUE TO THE RECENTLY  
SUPREME COURT CASE, PADILLA V KENTUCKY. MOTION

(3) Grounds raised MY ATTORNEY NEVER TOLD ME I WOULD BE DEPORTED  
AND SEPARATED FROM FAMILY, WHEN I PLEADED GUILTY

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Name of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

AO 24-3 (Rev. 2/95)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I NEVER KNEW THAT THE SUPREME COURT HAD MADE THE  
RULING THAT IF THE DEFENSE ATTORNEY NEVER ADVISE ME THAT I  
WOULD DEPORTED WHEN I PLEAD GUILTY, AND NO ONE GAVE ME ANY  
ADVICE OF TO THAT SUPREME COURT RULING.

THIS IS ALL NEW TO ME AND BESIDES I'M A LAYMAN IN MATTERS  
OF LAW, AND HAD TO GET SOME PRO-SE HELP.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: INEFFECTIVE DEFENSE COUNSEL

Supporting FACTS (state *briefly* without citing cases or law): MY ATTORNEY NEVER TOLD ME  
THAT I WILL BE SEPARATED FROM MY FAMILY AND GET DEPORTED  
TO A COUNTRY WHERE I HAVE NO ONE, AND I HAVE NOT BEEN  
THERE SINCE CHILDHOOD. NO ONE TOLD ME I WOULD LOOSE MY  
UNITED STATES RESIDENCE PAPERS, MY CRIME IS NOT REALLY  
FOR A DEPORTATION CHARGE, AND I'M A FIRST OFFENDER.

B. Ground two: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

AO 243 (Rev. 2/95)

D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

(c) At trial \_\_\_\_\_

(d) At sentencing \_\_\_\_\_

AO 243 (Rev. 2/95)

(e) On appeal \_\_\_\_\_

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/23/2010  
Date

Karl H. Hume  
Signature of Movant

E.D.N.Y.-Bklyn  
08-cr-48  
Gleeson, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

---

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 13<sup>th</sup> day of December, two thousand ten,

Present:

Pierre N. Leval,  
Debra Ann Livingston,  
*Circuit Judges,*  
Richard M. Berman,\*  
*District Judge.*

---

Kadir Hamad,

*Petitioner,*

v.

10-4694-op

United States of America,

*Respondent.*

---

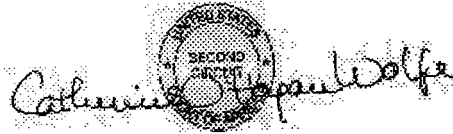
Petitioner, *pro se*, requests an order authorizing the United States District Court for the Eastern District of New York to consider a second or successive 28 U.S.C. § 2255 motion. Upon due consideration, it is hereby ORDERED that the motion is DENIED as unnecessary because the proposed motion would not be successive; rather, the record currently available to this Court indicates that the proposed motion would be the Petitioner's first § 2255 motion. *See James v. Walsh*, 308 F.3d 162, 168 (2d Cir. 2002). Thus, it is further ORDERED that the application be TRANSFERRED to the United States District Court for the Eastern District of New York and filed

---

\*Judge Richard M. Berman, of the United States District Court for the Southern District of New York, sitting by designation.

as a § 2255 motion for adjudication by the district court in the first instance. *See* 28 U.S.C. § 1631.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

A handwritten signature in cursive script, reading "Catherine O'Hagan Wolfe", is written over a circular embossed seal. The seal contains the text "U.S. DISTRICT COURT" around the top and "SECOND JUDGE" in the center.